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**A STUDY OF CHILD-DEFILEMENT – THE NEED FOR
STIFFER PUNISHMENT**

BY

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DIRECTED RESEARCH

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I recommend that this **Directed Research Paper** prepared under my supervision by

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Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to format as laid down in the regulations governing **Directed Researches**.

Date:

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**MRS LILIAN MUSHOTA
SUPERVISOR**

**Childrens griefs are
Little certainly,
But so is the child**

Percy Bysshe Shelley

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PREFACE

Child defilement has given rise to great concerns in many countries. In Zambia this is becoming rampant. This is the most insidious social problem currently.

This paper has been written to provide an outbreak of how serious and realistic this criminal Act is. It brings out cases that have been reported, how they have occurred and what the legal institution has done concerning passing sentence on perpetrators of this vice.

It will prove to be helpful to parents in trying to assist them to close up any loopholes in the family fraternity to ensure that justice is done in the manner appropriate to this offence.

This paper is divided into four chapters. The first chapter gives an outlook of the act of child sexual abuse, analyzing the existence through real life situations. Chapter two will educate on what has been advanced to be the cause and rise of this barbaric act and what it has resulted into.

The legal framework available in combating the perpetrators of this act is discussed in chapter three where the Zambian as well as the International Legislation are analysed. In the final chapter, a number of recommendations are brought out that would ensure that child defilement is eradicated from our societies.

ABSTRACT

Today, News headlines are dominated by the threat of nuclear catastrophe and the relentless world wide economic decline. But these are not the only threats to humanity. Each year, over one million children around the world are subjected to sexual abuse and exploitation¹

Historically, our culture and traditions cherish and celebrate children. But it seems that this trend is dwindling and turning into a night mere. Children are in a more crisis situation today than ever before. Childhood has virtually been lost to children through “child defilement” or ‘sexual abuse’. Far from being a rare act of deviant behaviour, childhood sexual abuse, being a widespread affliction, cuts across all social, economic, religious and racial lines. People with this inclination, the majority are persons who have cultivated a convincing veneer of normalcy. They satisfy their perverted lusts by targeting naïve, trusting, and defenseless children.

The first few years of life are critical to a child’s emotional development. It is during those tender years that a youngster begins developing moral boundaries and a sense of personal worth. None-the-less, it is a sad fact of life that for many young boys and girls, such a childhood is out of reach. Childhood dreams are shattered when children become victims of sexual abuse. It is painful trend though; well known and publicized that has led to this research. It is hoped that this discussion in this paper will go a long way in elaborating the seriousness of ‘child defilement’. In so doing reasons will be discussed why the perpetrators of these acts are involved in such and the effects on their victims. In analyzing the far-reaching effects, it will be imperative to consider how effective the law has been applied in this aspect, whether it has proved to be adequate. This matter is of a serious nature because children are the future for every society, once they are not there, there is definitely no tomorrow. It is therefore very important that society never overlooks the seriousness of this criminal act.

So then the question is, when will children cease becoming victims of abuse and exploitation? Would more law enforcement and stiffer penalties for crimes committed against children protect them? Yes, until the root cause of such tragedies is eliminated, children will remain subject to much suffering.

Because of the prevalence of this hurtful act, it is imperative that it is brought up to show the reality of this problem; therefore cardinal in determining this vice is the sentencing.

CHAPTER ONE

INTRODUCTION

The problem of “child defilement” (or abuse) is a frightening reality. This horrendous crime has impacted negatively on the nations’ moral, economic and spiritual values. Sexual abuse of children ranging from prostitution, pornography, incest, rape, defilement, early marriages is getting more and more prevalent at the disadvantage of young Zambians

1.1 What is Child Abuse

The concept, “child abuse” has been said to be an explicit assumption that the culprit has departed from what is generally accepted as normal behaviour toward a child or, a deliberate attempt on the part of the abuser to deny the child his or her natural rights and or privileges or to hurt the child. This always experiences physical, emotional or psychological injury.²

Professor David G. Gil³ defines child abuse as “the intention (sic) non-accidental use of physical force or intentional, non accidental acts of omission on the part of a parent or other care takers or any adult interacting with a child in his or her care, aimed at hurting, injuring or destroying that child.” Sexual abuse of a child would involve fondling of genitals, sexual intercourse and oral or anal-sec. Some abusive acts include showing porno to a child, and indecent exposure.

² Dr. Robert T. Mushota’s thesis, Jan 1997, UNZA.

³ Qouted by Dr. R.T. Mushota (1987).

It is no doubt from the above statements that abusing a child takes a deliberate move by an adult on the child, it is not accidental move. But it is imperative to note that this can be done by not only those taking care of the child, but even neighbours or visitors.

The Longman Dictionary of Contemporary English however, defines 'to defile as to destroy the pureness of something or somebody. Under the penal code, defilement relates to sexual intercourse with a girl who is under the age of sixteen. It states, that:

- (i) "Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment for life. Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe, and did in fact believe, that girl was of or above the age of sixteen years."

The fact is that sexual molestation has been going on for a long time and today it is widespread. Young children fall prey to some form of sexual abuse by adults, whether it be exhibitionism, inappropriate fondling, rape or incest.

At the beginning or outset, sexual abuse maybe disguised as playful or affectionate contact and go on from there. The abuse is likely to persuade and pressure the child, using all the built-in authority of an older person. Children are trained to obey adults even when told to do things they do not like such as to bed early or eating the vegetables on the plate. Molesters take advantage of this training. For example, one woman of

thirty years old remembers having been approached at the age of five by her grandfather. He said to her, "Good girls do this for Grand pa and never tell their mothers"⁴

Sometimes, abusers often use presents and threats to get an abusive relationship started. These threats are sometimes subtle, striking at the child's sense of security. At times, they use supplicated and cunning tactics like in situation where a baby sitter initiates sexual under the guise of normal bathing and hygiene inspection. Though this trend is old in history, but as this generation progresses, and more and more people are lovers of themselves, having no natural affection, without self-control, and as such the attack on children is becoming greater.

A disintegration of natural family love has over run modern society. It is not the stranger in a trench coat, the loner lurking in the bushes, who poses the greatest threat to children. In most cases it is a member of the family. The vast majority of sexual abuse (defilement) occurs in the home.

1.2 CASE ANALYSIS (REPORTED)

In Chawama a father defiled his two daughters whilst the mother was out of town attending a funeral.⁶

In Libala, a fifteen-year girl was defiled by her teacher.⁷

In Garden Township, a Mrs. Ngwira left her 3-year-old child with the maid on 4th April 2002. On the 5th of the same month the child complained of pain on private parts. The

⁴ United States report Awake of 1983, May 22 pp. 14-15.

⁶ Reported by Victim Support Unit. (VSU).

⁷ Case was referred to WILAF.

child was taken to Chipata Clinic for medical tests, where it was confirmed that the child be tested too and the results came out positive for an STI.⁸

In Luangwa Township, a fifty-five year old man defiled a three year old girl. The man was the landlord. He enticed the child to enter the house, locked himself in the bedroom with the child. “When I returned home (father) around 18 hours, my daughter ran after me and told me that papa (as the landlord is commonly referred, the man gave the child one hundred kwacha not to tell anyone. The mother explained that the child was crying when touched her private parts. A grand child to the landlord said he had found him locked in the bedroom with the girl. The University Teaching Hospital confirmed that the child had been defiled. The man was arrested but released on police bond.⁹

In another case, in Kitwe a 25-year-old man coaxed a six-year old girl with buns before he had sex with her. The man was sentenced to three years imprisonment with hard labour by the Kitwe Magistrate Court. When asked by the court why he did it, the man (Daka) answered that he knew that the girl was between six and eight years old and she had agreed to have sex with him after he bought her buns.¹⁰ A thirteen-year-old girl in Choma was defiled by a 39-year man on Jan 2, 2003. The girl said she found the accused on top of her as she was in deep sleep after 21:00 hours. She screamed for help and her aunt stormed into the room. The accused was an occupant of another adjacent room in the house, which has four different occupants renting from one landlord. Evidence revealed that semen was found on her pants and thighs. The accused was released on bail.

⁸ Post Newspaper Jan, 2002.

⁹ Zambia Daily Mail of January 20, 2003.

¹⁰ Times of Zambia Newspaper of January 7th 2003.

Abusers, as noted, rather than using force, often manipulate the child into sexual acts taking advantage of the child's lack of experience. It however, wrong to assume that all abusers are male or that all victims are female. For instance, in a case reported in the Post Newspaper of January 13, 2003, a woman was arrested for infecting a seven-year-old boy with a sexually transmitted disease. The 26-year old woman was a neighbour who had been assisting the father of the boy to take care of his children since his wife had left the town to attend to some family matters. The woman herself was married. It was only discovered one Friday when he (father) got home around 20:00 hours and found his son crying saying that he was experiencing severe pain when urinating and that his private parts are swollen. The father discovered that there were sores all over his son's genitalia. The medical report showed an impression of syphilis. Narrating his ordeal, the boy said his 'Aunt' used to call him to her house many times. "She told me she would give me some money for sweets if I agreed to undress. She took off my shorts and then lay on top and she would shake and shake and then afterwards would give me K50 or K100 which I would use to buy sweets." When asked how many times the 'Aunt' slept on him he said many times, "but had now stopped because my penis has sores and that is why I told daddy." Police confirmed having arrested the woman and the matter taken to court.

In another incident, a twelve-year-old girl in Kitwe defiled a 3-year-old boy. She started by fondling the private parts of the boy and after an erection she grabbed the boy's penis and pushed it into her vagina to have sex with him. The boy's mother found them in the act. The boy was found with bruises on his penis. The girl detained at Wusakili Police and was later released on bond.¹¹ In the same paper, a man of Mulenga Township in Kitwe defiled a three-year-old stepdaughter at night, while his wife was sleeping. The

¹¹ Times Newspaper (Sunday) January 7, 2003.

wife woke up and found the child half naked with some watery substance coming out her vagina. When the man went to work the following day, the suspect did not come back home. In another case a one-year old baby was defiled in Kasanda Police Camp on December 29, 2002 by an unknown person and no arrests were made.¹²

In some cases the perpetrators connive to abuse a child as was the case reported in the post Newspaper¹³ where an HIV positive couple in Mbala on March 27, 2003 forced a 16-year old male juvenile to have sex with the wife. Facts of the case are that the couple found the juvenile at lake Chila in Mbala and asked where they could buy fish. The boy offered to take the couple where the fish was sold but could not find the fisherman at the lake. The couple then turned on the boy and dragged him to a secluded place and made him lie on his back as the woman undressed and lay on top of the juvenile forcing him to have sex with her. The woman further forced the juvenile to have oral sex with her. The couple then took the boy with them to the Presidents Park where they repeated the act before releasing him and offered him K50,000.00 so that he does not report the matter to anyone. Police way-laid the duo as they were going to make the payment. The juvenile had reported the matter to his father who alerted the police. Mbala magistrate Daniel Kalunga expressed shock at the conduct of couple and stated only deterrent sentences could halt such behaviour. He said, "in my 15years of experience I have never heard or seen such kind of behaviour by a couple." Prior to reading out the sentence he read out the HIV positive results for the couple while the juvenile was still negative. The juvenile however had suffered severe wounds on his private parts from the act and was forced to undergo circumcision against his wish.

¹² Ibid

¹³ Saturday Post, May 10, 2003.

In the case, The People v. Philip Nsofwa,¹⁴ the accused aged nineteen years old had carnal knowledge of Chioni Ngoma a girl below the age of seven years in George Compound. They were neighbours. The accused has called her during the night so that she could be sent on an errand but instead has sex with her. He was sentenced to nineteen years of imprisonment with hard labour.

1.3 STATISTICS OF DEFILEMENT CASES

It is not just a nightmare that child defilement is happening in Zambia. The following figures show how prevalent the trend has become and that this practice is a reality.

STATISTICS OF CHILDREN DEFILED AGED 0-14 YEARS

1996	1997	1998	1999
105	54	252	204

* source; Women in Law and Development in Africa (WILDAF) Journal

STATISTICS OF 2002

Lusaka Province	-	462
Copperbelt Province	-	128
Northern Province	-	56
Eastern Province	-	37
Western Province	-	14
Central Province	-	91
Luapula Province	-	11

¹⁴ Case No. IPD, 238 2003 unreported.

North Western Province	-	9
Southern Province	-	57
Total		865

*Source; Victim Support Unit (VSU) report

Out of this report, the following was observed:

Convictions	-	238
Withdrawn	-	17
Acquittals	-	10
Withdrawn (at Court)	-	29
Carried forward	-	146
Pending	-	425
Total	-	865

These reports shows how serious this problem is. It exists and it cannot be ignored. Besides, some cases are not reported especially those that involves a husband or bread winner in the family, for fear that if he is convicted, there will be no one to continue supporting the family. Hence they prefer to keep quiet about the matter.

1.4 What the Police Victim Support Unit does about child defilers:

Cases of this nature must be reported to the Police so that perpetrators of violence against children can be arrested and prosecuted. The Victim Support Unit was formed to ensure that rights of women, children and the elderly are protected. It is committed to eradicate violence against women, children and the elderly.

It can be argued at this point that the increase of these cases could be that there is now a facility where people can report to and it has been extensively advertised to the general public, as such most of such cases went unnoticed because no one dared to raise them up. But it is a fact that defilement has been in existence from time of immemorial.

The Victim Support Unit protects children by the use of the law. Any concerned person can report on behalf of any child he/she suspects to be living in difficult circumstances. The following are among the actions the victims support unit under take in protecting children;

- Arresting and protecting child abusers
- Removing children from harmful environment and finding safer homes for their children.
- The Victim Support Unit is found at all major Police Stations through out the country. Despite this important organization being available and so established, child defilement cases are on the increase showing that something must be done with regard to sentencing for this crime, records from Chikwa Courts criminal registry shows figures ranging from 8 weeks to 7 years with hard labour.

CHAPTER TWO

CAUSES AND EFFECTS OF CHILD DEFILEMENT

This discussion acknowledges the complexity and multifaceted issue of child defilement, that there are facilitating factors such as breakdown of family and social values which expose and make children vulnerable to sexual abuse.

According to the findings revealed by the Technical Committee on the strengthening of laws¹, the following are the common ones:-

2.1 Causes of defilement

- (a) **Sexual perversity**; where those involved have no control over their sexual desires and therefore take advantage of young children left in their care. The lack of adequate institutional day care centers for children and the prohibitive fees tend to create a situation where children, especially those with working mothers are left in the care of relatives or others who tend to abuse them.

Some perpetrators are known to be “**paedophilia**”. The New Oxford textbook of Psychiatry (volume one) defines ‘pedophilia’ as ‘sexual perversion in which children are the preferred sexual objects, for reasons they may not even comprehend.

¹ Enforcement mechanisms of support systems relating to Gender based violence particularly against women and children; Nov. 2000, for women in law and Development in Africa (wildaf).

- (b) **Medicinal factors;** with the prevalence of HIV/AIDS, there are superstitions and beliefs that sex with a child cures HIV/Aids, boosts business potential, increases chances of promotion at places of work, or enhances other powers such as witchcraft. This is usually on the advice of witch doctors and traditional healers.
- (c) **Lack of parental care;** The inability of most parents to provide adequately for their children due to poverty forces girls into sexual relations with taxi-drivers, bus drivers etc, so that they raise some money to afford them to eat something or go to school. Parental support is lacking in many households today. Parents spend less time with their families. Some parents leave home very early, leaving their children asleep and come back very late when the children have already gone to bed.

In another report by Community Youth concern on child sexual abuse in Zambia², the following were the factors adduced leading to child sexual abuse;

- (i) **Inadequacy in housing;** It is common in Africa, Zambia not an exception, for a family and relatives (those mainly of the extended family) to live together in a house which does not have enough or adequate space. For example, a family of eight members or so could be housed in a one bed roomed house. The husband and wife who are the owners could occupy that one bedroom, the rest of the family share different corners, and maybe boys in one corner and girls in the

² Assessment of child sexual exploitation in Chainda Kamanga and Luangwa Bridge by Monica Getrude Shinkanga, Dec. 1996.

other. This creates a vulnerable state. Sometimes it has been taken for granted that a youngster of 3 years or so can sleep on the same bed with the elderly believing that nothing would happen to the child since she or he is in the care of elderly person.

- (ii) **Pornography in the home;** with the coming of the Internet, Pornography is a common feature. There are scenes of heterosexual and homosexual, rape, oral, anal and group sex, incest, bestiality a loathsome out pouring of perversions. Lusaka based consultant psychiatrist Alan Haworth cites watching pornographic movies and explicit movies as a major motivation behind the spate of defilement cases.

There can be doubt that pornography creates appetites that should not exist, and stimulates cravings that should never be satisfied.”

Unlike cinema reels and old photographs, videocassettes, the Internet has made pornography even more readily available. The consumer who is afraid that his neighbor will see him in the adult section of a video store can now stay at home and order by pushing a button on his cable system or his direct TV.

Researchers say that the repeated use of pornography can interfere with the ability to enjoy and participate in normal marital intimacy.³ Dr Victor Cline, a specialist in treating sex addiction (in the same research material) states that what starts as casual viewing of

³ Times of Zambia Saturday August 30 2003

pornography can eventually lead to an escalation to more hard-core, abhorrent material leading to deviant sexual acts. He reports that; any type of sexual deviation can be acquired this way...’ and that it cannot be eliminated even by massive feelings of guilt. Like a cancer, it keeps growing and spreading. It rarely reverses itself and it is also very difficult to treat and heal.”

In another report, a British detective who coordinated a five-month Internet investigation stated, “the content would absolutely turn the stomach of any right-minded person⁴”. In the same magazine a Belgian police stated that the Internet images were the most revolting depictions of child porno... It went so far that people abused their own children to be able to present the most striking material.” For example, one man kept photos of him raping his niece and entered these in his computer.

(iii) **Lack of self-esteem;** on a radio discussion programme with Police spokes person Brenda Muntemba⁵, a lack of self-esteem was brought out to be also a contributing factor to this abuse by the perpetrators. Many of them would like to get an object without a fight and so it is easier for them to do so on a child than an adult where negotiations will take place first before going into the act for example a prostitute.

(iv) **Gauge for respect of the community;** It is believed in some communities that a man would gain more respect if they are able to go for younger girls as was one

⁴ Awake April 8, 1999, children in crisis, who will protect them? Pg 7

⁵ Lean on me programme, radio 4 znbc. 10 may 2003

case brought out in the same discussion where a seventy year old man went for a 12 year old girl, To them there is a feeling that they are still man enough despite the age, and so the community applauds them.

- (v) **Divorces or family separations;** This in many cases creates room for child sexual abuse as was the case in Matero where a five year old boy was sexually abused through the anus by his father; The mother stays in Chingola and discovered this upon visiting the boy.
- (vi) **Mind-altering** drugs like alcohol can lead to one defiling a child as psychiatrist Alan Haworth states and also the failure to settle disputes amicably.

2.2 EFFECTS OF CHILD SEXUAL ABUSE

A child's trust is usually given completely, without reservation so if that trust is betrayed, it has a devastating impact on an unsuspecting young mind. Today persons and places that previously signaled safety or support have become associated with danger and fear. The Childs world becomes less predictable and controllable".

As a result of such abuse, much of which has gone on for many years, many children have developed social and psychiatric problems even later in life and well into adulthood. It is so damaging on the child because she or he has been taken advantage of because of being a child.

In a research undertaken by YWCA project in Luangwa for example⁶ it reported this; “evening is the time when men from the nearby military encampment come over to the Luangwa settlement area. During this time children are especially vulnerable. One girl reported that a man leapt on her in the night and raped her while she was sleeping under her stall. She was thirteen years old. the girl stated that the soldiers come up to the settlement at night to “play” with the girls. What type of play? “Kugona Tubakazi” – sleep with small girls. Most of the children who are sexually abused suffer in silence. “Like soldiers missing in action” notes the book, the child in crisis, *“they remain lost for years in a private jungle of fear and guilt”*.⁷

Childhood sexual abuse is an overwhelming damaging and humiliating assault on a child’s mind, soul and body. The abuse actually invades every facet of ones existence. In one recent case child X who is now 15 stated; “I still live with a scar on my mind”.⁸ Children have different personalities, coping skills and emotional resources. Much also depends on the child’s relationship to the abuser, the severity of the abuse, how long the abuse lasted, the child’s age and other factors.

The victim support unit in their encounters found the following as some of the effects of child sexual abuse;

⁶ Dec 1996, child sexual abuse in Zambia

⁷ The book, ‘CHILD IN CRISIS’ reported in Awake April, 8, 1999.

⁸ Times of Zambia Saturday August 30 2003.

1. **Mental disorder;** A Unicef child protection officer Annie Sampa Kumwenda says “ *each day I see and handle cases of children traumatized sexually, I get depressed*”.
2. **Suffering low esteem or being withdrawn.**
3. **Depression.**
4. **Death** especially in cases where the child contracts HIV/AIDS. In some cases, the effects have had a long-term effect. Because of having been sexually abused repeatedly, they have grown up with pain resulting into:
5. **Early divorces;** Due to the feelings aroused at an early age, she or he may be overwhelmed by them such that this later impedes her/his ability to enjoy marital intimacies. A victim, Linda⁹ confessed; “*I find the sexual side of marriage to be the hardest thing in my life. I get the most dreadful sensation that it is my father there and I get panicking*”’
6. **Promiscuity;** Other victims react in just the opposite way and develop compulsive immoral desires. They lead a promiscuous life and would end up having sexual relations with complete strangers. This in most case leads not only to contracting sexually transmitted diseases but also unwanted pregnancies. It is no wonder that this contributes to street children being on the increase. And when those street children are left without parental guidance and control, they too become vulnerable to contracting sexually transmitted diseases and also bearing children who have also no parental guidance and prone too to sexual abuse. So it forms an unbreakable chain,

⁹ Awake February 22, 1997

7. **Juvenile delinquency;** most sexually abused children become abusers themselves.
8. Some victims turn their **destructive feelings on themselves.** They desperately attempt to bury their feelings of pain by turning to alcohol and drug abuse or become workaholics or tragically develop eating disorders.
9. **Some victims are sadists;** they tend to develop a negative attitude and could become aggressive in dealing with other people because of the pain they harbor inside them.
- 10 **Early pregnancies;** minor X for example, a traumatic experience. She got pregnant by her father. She was taken to hospital for an abortion then later had different sexual infections at different times worse of all she was rotting inside.¹⁰
11. **Distrust for men;** due to early abuse, some turn to become lesbians.

With such effects, one can no doubt comprehend how sexual abuse can warp a child's entire view of life. It is not just the child's body that is abused as seen above. "Every adult who was molested as a child brings from his or her childhood pervasive feelings of being hopelessly inadequate, worthless and genuinely bad" writes Dr. Susan forward.¹¹

¹⁰ Times of Zambia Saturday August 30 2003

¹¹ Awake July 22, 1993, pg 6-7.

Being abused sexually as a child, no doubt makes some grow up feeling unlovable and worthless in life. Questions like “Why me?” are on the mind such that some blame themselves for no apparent reason. This affects their whole livelihood. Such low self-esteem as an adult can be declared a suicide risk. The tension of abuse causes many children to grow up with negative expectations and rigid defenses that imprison rather than protect.

One proverb states; “Even in laughter, the heart may be in Pain”¹² Yes, many victims have deep emotional scars, secret wounds that foster inside. It seems however that ‘in some instances, apart from catching the abuser in the act, most cases will not be reported there and then. For instance in a Radio interview¹³ the victim, Chansa who at this time was in her early 20s was sexually abused at the age of 13 by a guardian, she was living with, who happened to be her married uncle. He abused her for six months and threatened her not to tell. At the age of 14, another uncle abused her. When she was 15 another uncle who came to live with them also abused her sexually. She says she was blamed because she is the one who made passes at the men. Because of such comments, she couldn’t report. Still at another time while she was visiting, the abuser hid the keys to her room and took advantage of her asthmatic condition to sexually abuse her. She said she was scared to confide in anyone. At the time she spoke out, her mother was affected greatly such that she became sicker as she is a hypertensive patient. Abused children (sexually) may also develop poor parenting skills.

¹² Proverbs 14:13

¹³ Lean on me programme, radio 4, zNBC of 10 may 2003

2.3 HOW TO DETECT CHILD SEXUAL ABUSE

Since in many cases, having observed that such cases or incidents will not be reported, due to threats or gifts given to the child, it is possible to know that there is something wrong with the child by observing certain unfamiliar behaviour in the child, which never existed such as;

- a) Closing up; for example instead of watching TV, they will go to sleep.
- b) When being told to do something or perform some chores they say, "I am feeling sick."
- c) When the abuser touches them, they tend to shrink.
- d) Bed-wetting or soiling pants, biting nails.
- e) Loss of concentration in class.

Absence from school and suddenly. Poor school performance.

Bruises or injuries on soft tissues around the vagina.

It is sad to note though that despite such signs (above) being detected, in most cases these abuses have not been reported in order to bring the culprit to book.

2.4 WHY MOST CASES ARE NOT REPORTED

A number of reasons have been advanced for not reporting child sexual abuse.

Some include the following:

- **Economical reasons;** In situations where the culprit is a breadwinner, the wife or relatives would rather to keep quiet about the incidence because it

them who will lose out in case the husband is imprisoned. There will no longer be the financial support they have been enjoying.

For instance in the case of the 15 year old who had been defiled by her father, she stated that *“my father who is a government worker defiled me but when I told my mother about it she shut me up and warned me not to disclose to anyone. She said that if my father has jailed no one would be there to provide for the family”*.¹⁴

- **Threats from the abuser;** this was evidently brought out in the experience of Chansa above. The abuser can threaten to kill or stop supporting the child regarding education if he is the guardian. Sometimes child is an orphan and has no one else to stay with, if she/he reports, she/he might be chased out of the home and be in the streets. In order to continue staying there, she/he will not report the matter. Mary Chombe, a social worker at Anglican children's project in Lusaka confirmed that abusers threaten violence against victim to hush scared to speak openly. This makes their job difficult.
- **Society finds it hard to talk about it;** Its embarrassing to the family to let people know about such an occurrence. There is a possibility of losing friends.

¹⁴ Times of Zambia Saturday August 30 2003 pg 8

- If the whole act was **for medicinal purposes**, for example a belief for the cure of impotency then, it will not be reported.

- In some cases, people are just **not willing to testify**. For instance, in Ndola's Itawa residential area and in Mushili Borano, there are two men who have married their own daughters in full view of said to have started abusing his daughter soon after the mother died and they remained the two of them in the house. At time went by, the girl got pregnant and gave birth to their first child. Now she has another child from her own father. In the Mushili incident, after the man impregnated his first daughter, his wife could not stomach the shame and left the matrimonial home. The man is said to have continued sleeping with his daughter and they have three children. In Chifubu another man impregnated a daughter of his elder brother and went on to sexually abuse other nieces as well. The man who is said to be living with his mother, seems to have the full support of the mother,¹⁵

- Attackers make it **seem normal** in some situations. For instance, in an incidence involving a teacher in Luangwa, he grabbed the thirteen-year-old girl who was waiting for transport to go to Petauke. She narrated her ordeal as follows;

"It was dark and I was frightened. Everything happened so quickly. I did not know how to react. Besides, I was too small to force my way from

¹⁵ Stop the silence; lets discourage defilers, rapists, by Benjamin Mwanza. Sunday Times of Zambia Newspaper November 9, 2003 p. 5.

him. He reached his home, pushed me inside and locked the door. He told me to undress, but I resisted. In the struggle he tore my pants. I struggled for 2 days to free myself but to no avail. He tried to have sex with me but my space was too small ... on the second day he came back with a bottle of Vaseline and put it on my small space. He forced himself into me. It was painful. I stayed indoors for a week. I could not walk. He kept me for a month at his place. My parents came to the house. He paid the dowry and price for abduction and kept me as his wife. After three years eight months we divorced. By then I was 16 years old:" Asked as to why they divorced, she replied "he started having sex with my young sister who had not yet turned 14 years."

The case ended without going to court. The parents again only asked for money. This is an example of a situation where the attacker makes it all seem normal by ending it all in a marriage. But its note worthy that such an act has become habitual.

- Traditionally a woman should feel wanted and so has a duty to give in when a man wants her. It is said that you are valued according to what is between your legs by society generally. Most of such knowledge is passed on during initiation ceremonies. That is why in the village setting many young ones are given into marriage at a very tender age because it is believed they are ready to take up any man. Under the customary law, the age of puberty provides the minimum conditions for parents to give consent. With many customs in

Zambia, one consequence that flows from this development is the uncertainty of the law, which in many cases can give rise to unsatisfactory results.

- The victims in some cases wont reveal because the abuser has given them some money.

It is due to these and other reasons that in the past, child sexual abuse was rarely heard of. But we note that society is dynamic, its not static and so with mechanisms such as the victim support unit being established, these cases can be brought out now in the open. Families Sadly prefer not to report. What can help many people to be positive about reporting such cases is by establishing very stringent measures regarding punishment for both the perpetrator and those concealing such acts on the innocent child who might have become aware of the defilement.

CHAPTER THREE

LEGAL PROVISIONS

There has been a lot of hue cry against the recent upsurge of child sexual defilement.

The State actually is the outstanding feature and dominant actor both on the local and international scene. It possesses identity, legitimacy, legal definition, machinery for taking decision and the capacity for action.

It is really imperative that the interest of the child, especially their natural rights be protected by an array of laws to protect them. Specific reference has been undertaken both internationally and locally (domestically) on the recognition and protection of children rights including sexual violations.

3.1 DOMESTIC LEGISLATION; THE CONSTITUTION

The provision of Article II of the Constitution of Zambia in outlying the fundamental rights and freedoms provides that; “it is recognized and declared that every person in Zambia has been and shall continue to be entitled to fundamental rights and freedoms of individual, that is to say, the right whatever his race, place of origin, political opinions, colour, creed, sex or marital status but subject to the limitations contained in this part, to each and all of the following;

- (a) Life, Liberty, security of the person and the protection of the law”.¹

¹ Chapter 1 of the Laws of Zambia.

These rights, endowed in the supreme law of the Country, the Constitution, are a social obligation entered in to by men and women to respect each other's life.

Human beings should realize that at all times, as individuals, they have duties to other individuals and to the community to which they belong. And so, they have an obligation to strive for the promotion and observance of the rights recognized in the Constitution.

The question is, where are the rights of the young children who are defiled at a tender age exercised? The right to life as well as security, is taken away from them at the time of being defiled and as they undergo the consequences of sexual abuse. The earlier chapters elaborated in detail how disastrous the condition is on the victims. There is no doubt that sexual abuse or defilement takes away the right to life and security of the innocent children because it is a fact as report have shown that most are infected by the deadly HIV/Aids Virus or other sexually transmitted diseases, and others become pregnant at a very tender age resulting into complications that may lead to death. The trauma and pain inflicted on these innocent children has not sneaked out unnoticed as has been reported. Such results of defilement are tantamount to murder since there is no known cure for the virus at the moment.²

It is however noted that the sex-drive can be pressurized depending on how a person their life, the priorities one sets in life and the decisions made. People who defile children fail to examine themselves against their own integrity, that of other persons, the sociological environment and consequences outlined by moral philosophy.

² A report by the Lusaka District Management Reported by Times of Zambia September 25, 2003

A society that cannot recognize the right to life and security of minors must be placed under scrutiny. Why are these rights overlooked? Why does society seem to be so helpless letting the future leaders fade away without real concern and strict effort to curb this vice? Is there any other legislation we can point to that can maybe guide us in this matter. We now examine the Penal Code on this issue.

1 Chapter 1 of the Laws of Zambia

2 the Lusaka District Health Management Superintendent for Sub-division four under Team; reported by Times of Zambia September 25, 2003 “The Impact of Child defilement on Society”

3.2 THE PENAL CODE

Under the Penal Code, defilement relates to sexual intercourse with a girl under the age of sixteen whether with, or without her consent. Section 138 states that;

“Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment for life”³

Findings however, indicate that offenders who commit this grave crime are hardly sentenced to life even where a very young child is defiled. At times the perpetrators get away with mocking jail sentences as short as three months of simple imprisonment. A deficiency noted in section 138 of the Penal Code is that it only states that ‘any girl’ under the age of sixteen years. The question is, is it only the girl child who faces defilement? As was brought out in the earlier Chapters, reports indicate that even women and couples can defile a boy child. There is no doubt that there is a lacuna in this area in

³ Cap 87 of the Laws of Zambia

the law. The risks are the same to both sexes. Further this sentence of life imprisonment is not applicable to the magistrate Courts because their powers to sentence thus far are limited.

In one case for example, it was reported that magistrate Chinyemba Kambanya sentenced a twenty-six year old man, Justin Chibamba for three years for defiling a three year old girl.⁴

Another provision which raises a question is Section 160 which provides as follows;

“Where a person has been convicted of the offence of incest or an attempt to commit the same against any court under the age of twenty one years, the Court has the power to divest the offender of all authority over such female and if the offender is the guardian, to remove from him such guardianship and appoint any person or persons to be the guardian or guardians of such female during her minority or any less period”.

⁴ Times of Zambia Newspaper 18th June 1996.

Child defilement can also be found in cases of incest because as facts have shown, a child can be defiled by close relatives, hence the import of quoting this provision. What is noticeable from this provision is that the mention or reference to male victims who may also be in need of guardians is not stated.

3.3 THE CRIMINAL PROCEDURE CODE

As regards proceedings, section 90(1) of the Criminal Procedure Code stipulates that,

“Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant....the magistrate, upon receiving any such complaint, shall

- (a) himself draw up and sign; or
- (b) direct “that a public prosecutor or legal practitioner representing the complainant shall draw up and sign; or
- (c) permit the complainant to draw up and sign a formal charge containing a statement of the offence of which the accused is charged....”⁵

In defilement cases, proceedings are instituted by the police since this is a criminal offence and since most victims are young children who may suffer injuries, medical attention will be a requirement. It has been a practice that medical personnel require a police report before attending to the victims.

⁵ Cap 146 of the Laws of Zambia

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⁵ Cap 146 of the Laws of Zambia

Most of the defilement cases are tried in the subordinate courts by Magistrates of various classes. The public prosecutor in these courts prosecute on these cases and are appointed by the Director of Public Prosecutions according to section 86 of the criminal procedure code. It is notable that the Public Prosecutors are policemen and women who undergo prosecutors training at the National Institute for Public Administration for three to six months and are not Lawyers. This leaves room for matters not to be expressed off justly.

3.4 THE SENTENCING ASPECT

The government, the civil society, the church and opposition political parties have all agreed that child defilement is an ugly and monstrous act which needs to be uprooted in order to save the next generation of leaders.

Currently, magistrate Court handle the defilement cases with sentencing power not being more than nine years. This implies that the magistrate can sentence a defiler to any sentence below nine years and is so because there is no minimum sentence provided.

In a Nairobi Court recently, a magistrate convicted a man who had defiled a child of ten years and gave her the HIV Virus to fourteen years and strokes of cane. The magistrate frustration was echoed by the following words in her judgement; “.....what the accused did is completely inhuman and is unforgivable. The maximum sentence as provided by the law is not sufficient. He deserves more than that but the courts hands are tied by the Penal provisions.”⁶

⁶ Times of Zambia 25th September 2003.

In Tanzania, child defilers once convicted are sentenced to life imprisonment. The life sentence is mandatory, it is a must once found guilty of defilement.⁷

Judges too in the high court can exercise discretion on sentencing. For instance a Kitwe high court sentenced a thirty-three year old man to twenty-five years imprisonment for defiling a nine year old girl. The lower Court had actually sentenced him to only seven years imprisonment.⁸ Judge Rapheal Okafor in the same case stated; “with the high incidence of HIV, every victim is potentially under the sentence of death with a stay of execution for a few years”. He said the possibility of such a person being infected with HIV was real. He elaborated further that “anyone convicted of such an offence should not expect any mercy from the Zambian Courts. The Court has a duty of protecting innocent girls from such brutes”. He said the sentence should send a warning to the would-be offenders.

It is notable that the sentencing by the magistrates is discretionary as is seen in the decisions passed. In some cases, the magistrates would commit the case to the high Court for a higher sentence. This is in accordance with Section 217 of the criminal procedure code which stipulates as follows;

“where in a trial by a Subordinate Court of an offence, a person who is not less than the apparent age of seventeen years is convicted of an offence, then if the Court is of the opinion that greater punishment should be inflicted for the offence than the court has power to inflict,

⁷ Ibid

⁸ Times of Zambia 22 May 2003

the court may for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner commit him in custody to the high court for sentence”.

This was seen in the matter mentioned above of the thirty three year old man who had been sentenced to seven years imprisonment by the magistrate court but upon the matter being brought before the high court, the Judge sentenced him to twenty five years imprisonment.

One is left to wonder as to whether these sentences merit the harm and damage caused on the victim

3.5 THE INTERNATIONAL LEGAL PROVISIONS (CHARTERED AND CONVENTIONS)

The convincing evidence of the magnitude of this tragedy has been presented in international conventions and Charters.

In a journal,⁹ this was the quote by the United Nations Children’s Fund, “unless the investment in children is made, all of humanity’s most fundamental long term problems will remain fundamental long term problems”.

Child sexual defilement falls in this category. However the dignity of human life and rights has been recognized internationally to be very important. Nations and Zambia in particular believe that respect for the dignity, equality and rights of all people including children in

⁹ Awake April 8, 1999.

order to have freedom, justice and peace must be recognized. The pin pointing factor in this matter is in the United Nations Convention on the Right of the Child.

In 1989 many nations got together and adopted the United Nations Convention on the Rights of the Child. In this convention the basic rights of children, the need to develop and be protected are elaborated. States that have accepted this convention need to practice what is stated there in.

The convention states that every person under the age of eighteen is a child with rights.¹⁰ In its preamble, it states among other things that “....The child by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection...” Zambia ratified this convention on the 6th December 1991 and is hence forth bound by its provisions.

This convention recognizes the protection of the child. In Article 16 it provides that;

“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks”.

In recognition of such protection, Article 19 states as follows;

“State parties shall take all appropriate legislative, administrative, social and educational measures to protect

¹⁰ Part 1 Article 1

the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including Sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child”.

To ensure an effective remedy, it would be appropriate to consider the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child mistreatment described heretofore, and, as appropriate, for Judicial involvement.¹¹

Further, Article 34 says that;

“State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse”.

Due to an upsurge of this vice, of late, there has been publicizing of child defilement as an evil that should be curbed through not only the media but even through Music. To date, the Zambian syllabus for nursery, primary and secondary school education, does not provide a facility to elucidate on such matters. And yet these are the vulnerable groups of society

Zambia, despite accepting the CRC, hasn't done much in this field. Now twelve years after acceding to it, the educational sector does not have it in its curriculum. Only now that there has been an increase is there seeming to be some alertness while this could have been

¹¹ Article 19 (2) CRC

seriously elaborated upon some years back to avoid the crisis we are in at the moment. The ones seen to have taken up the issue seriously are the non-governmental organizations. They have established centers right in the compounds where children finding themselves in such situations can run to. The YWCA for instance even goes to the homes of these victims to investigate the matter and undertake any necessary measures, such as removing a defiled child from that home to a safer one.

In Articles 4 and 5 of the African Charter,¹² brings out the fact that regardless of their age, human beings are inviolable and are entitled to respect for their life, integrity and dignity that inherit in a human being. And every person is entitled to the protection of the law.

From the above provision, victims of child sexual defilement are entitled to be free from such violations and are hence entitled to protection by the law. It is time that society and government join hands to ensure that children grow up in a free and just society.

¹² African Charter on Human and People's Rights, 1981.

CHAPTER FOUR

RECOMMENDATIONS AND CONCLUSION

If the case at which defilement cases are soaring in Zambia continues undebated, very little if anything, positive would be said of the moral fibre of this Christian nation or else who would like to exalt a nation in every given week, not less that five children are reportedly defiled by close relatives or some other known people within the community? And worse still, the perpetrators mostly get away with sentences as short as three months of simple imprisonment.

Children have many rights, which must be promoted, by the state. Once the state agrees to obey the convention, the state must work as hard as possible to guarantee these rights for children. The Human Rights watCH of 2001 stated “we challenge governments and those who uphold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of Human Rights for all.”

Victim Support Unit national co-ordinator Peter Kanuka said the records are rapidly increasing of these cases. Having noted the divesting effects of this barbaric act on innocent children, some civic organizations like the Young Women’s Christian Association (YWCA) are advocating the reformation of the laws on child sexual abuse. YWCA Youth Co-ordinator Cecilia Chomba told a workshop held for journalists on child sexual abuse at Lusaka Hotel that “Government should introduce stiffer punishment for defilers to deter others from committing the same offence. It should also re-train all judicial personnel and police if we are to combat the scourge.” Mr. George Kunda, who

is attorney General also said that his Ministry was collaborating with the Ministry of Youth, Sport and Child Development in coming up with suitable penalties. "The government has taken note of all concerns raised by various organizations on the need to stiffer penalties for child sexual abusers" he said, indeed, the sooner the exercise is completed, the more effective the fight against child sexual abuse will become. But the Million Dollar question then is, is meeting stiffer punishment the solution?

A Lusaka housewife of Chawama township, Ms. Moonga said that, "the solution would be getting to provide safety for the victim and support the affected families. I would personally not be happy to see my defiler husband jailed for 25 years when I know there could be no one to provide for my children."

In one case, the girl was being fondled by her brother-in law. Her sister and relatives became aware of it, though the wife was not, but all kept quiet fearing that, the brother in law would stop providing and supporting their sister who was his wife. These are situations very much entrenched in society despite the awareness of the issue. One would ask then which is the way forward? The silence is detrimental to the whole society. Consider the Chifubu man discussed above who did not stop at impregnating his niece but went on to defile others as well. The man was encouraged to continue with his unholy activities because he believed he was immune to any sort of Punishment. The silence should surely be stopped. Such are the controversies confronting the well-meant-campaign against child sexual abuse.

The bottom line is then that harm has been caused and hence the need to redress the issue. But how much punishment should be inflicted? There is no doubt that gravity of this offence certainly includes wickedness. Then, it is imperative to state too that any preventive sentence should generally be admitted by considerations of proportionality. Dr. AC. Ewing in 'The morality of punishment' argues that the practice of punishment may be justified as an attempt at the moral education of the offender as well as others. Lawton, L.J., delivering judgment of the court Appeal in the Sergeant case² stated, "what ought the proper penalty to be? We have thought it necessary not only to analyze the facts, but also to apply to those facts, the classical principles of sentencing. Those classical principles are summed up in four words, retribution, deterrence, prevention and rehabilitation. The Old Testament concept of an eye for an eye and both for both no longer plays any part in our criminal law. It is that society through court must show its adherence of particular types of crimes."

It is not in dispute that the Zambian Penal Code³ provides for a mandatory maximum sentence for child and sexual defilers to a sentence of life imprisonment. But the problem emanates from the fact that the subordinate courts cannot pass such sentences, only the high courts. The magistrates in this case exercise limited powers. It is as what one magistrate in a Nairobi court stated when convicting a man who defiled a ten year and had given her the HIV Virus, to fourteen years imprisonment, that 'what the accused did is completely inhuman and unforgivable. The maximum sentence as provided by law is

² Published in 1929

³ cap 87 of the Laws of Zambia

not sufficient. He deserves more than that but the courts hands are tied by the Penal provisions.”⁴

4.1 RESOLUTIONS

There seems to be some laxity in certain areas that require some attention if child defilement is to be avoided. In many situations, society also plays a part in promoting this vice. It is imperative that the following are noted;

- The need for education in life styles. In many homes, there is no control and proper supervision. Children can be found anywhere at anytime. Neighbours can come and go as they wish. Teenagers can go for entertainment anywhere at anytime. It matters less if they can go with a neighbour who is known to them. There is such a lack of proper security creating risky situations for the children. The problem becomes even more when the parents or guardians care more about entertainment for themselves with over indulgence in alcohol. If there is no order and control in the home, anything can happen to the children in such a situation and any serious misconduct can pass unnoticed.
- Adults must be sensitized on the consequences of child sexual abuse.
- Youths, starting from nursery level must be educated on their rights.
- We note that section 138 of the Penal Code stipulates that ... carnally knows any girl... is directed at only **girl-child** victims. The **boy-child** is not mentioned. As

⁴ Understanding, the Gaps in our Law on rape and Defilement by Judy Thongori; need of litigation, FIDA-Kenya.

the research has shown, even boys are victims to this crime. Thus there is a need to amend this section by including the boy-child as well.

- In the same section (138 of the Penal Code) **the sentence** for this crime is life imprisonment. Findings, however, indicated that offenders who commit this grave crime are hardly sentenced to life, even where a very young child is defiled. These days even babies under twelve months are defiled. Offenders escape with three four or five years prison terms. This makes section 138 in its current form grossly inadequate and irrelevant considering the gravity of sexually abusing a child. The sentence is no mandatory. **A minimum threshold should be provided for:** the age mentioned in the same section is sixteen. It should be reiterated that in Zambian context, an eighteen year old is still in school and under the custodianship or guidance of parents or guardians. She or he is therefore still considering very much a minor.
- **Parents and guardians** play an important role too. It is part of their Job to give their children the tools needed in case they meet up with such dangers starting at an early age. They need to talk to their children about this. Thus, they must have open lines of communication with their children.

Most parents too are careless at leaving their children with neighbours or a relative of the opposite sex. Such situations create a possibility of child defilement. Parents must be seen to be doing their part so that they are not contributors to the incident.

4.2 RECOMMENDATIONS

The following are the recommendations that need to be effected;

Defilement of girls/boys under 14 years must attract a **mandatory death penalty**. Life imprisonment to some perpetrators would not work as deterrence for them because they would even be happier to be in prison than be in the streets begging. But if they knew that this crime attracts death Penalty, they would be fearful to commit the offence.

1. defilement of a child (boy/girl) aged 14 to 18 years should attract a **mandatory life jail sentence**
2. an attempt to defile should attract a **mandatory sentence of life imprisonment**.
3. the victim and the perpetrator should be subjected to **compulsory HIV testing** as it is done on drunken drivers. The aim should be to discover if it was willful or deliberate transmission. If it was, the abuser must be criminalized. Compulsory testing creates physiological deterrence. If it was not a deliberate move, but still passes on the virus, the perpetrator should still face criminal charges.
4. there must be **established homes**, gazetted, where children as young as three years old can be taken when their parents seem to be having busy schedules. These homes should provide conducive environments for the little ones.

Childcare homes established under the government should be cheaper as compared to the private child-care homes run by individuals. Government must be seen to be affected by these criminal acts and so it must ensure that it is doing all it can to provide security and promote the rights of the child. Most parents today work so as to make ends meet and as they do so, it becomes difficult to find proper places where to leave their children while they are away. Therefore, to assist such parents, Government must step in.

5. **more powers** must be given **to the subordinate courts** to undertake stiffer punishment since currently their sentencing term does not even reach life imprisonment. It's been argued that if such matters appear only in the high courts it would take years for some cases to be heard because of the influx of other cases and so it would take a long time to adjudicate on these cases. Until this can be so, and provided the subordinate courts are not availed this power, it would be imperative then that **a separate court be created dealing specifically with matters concerning children.**
6. **negligent parents must face some form of punishment.** If parents or guardians become aware of the seriousness of child upbringing, they would not be careless in taking care of the children. Most parents see nothing wrong with leaving a child at home with an uncle or male cousin or a female maid with a male child. Such situations create dangers or the potential for child defilement to occur. Not only in this area are parents careless, some send their

children to buy things when it is late or dark, when they can do it themselves. There have been reports of children being raped while they were sent by their parents to buy something or to draw water. This is gross neglect and such people do not qualify to be parents. What would assist such immature parents would be if there were centers established to **train parents** on how to look after their children because one can be a parent but has no skills of parenting. Therefore there must be an Act which would elaborate clear rules on parental responsibility for children.

7. any case involving child abuse or sexual defilement should be **forbidden** for any parent or guardian to **settle the case out of court**.
8. the offence of abduction for sexual activity should state stiffer penalties similar to abduction of a woman in the penal code.
9. provisions relating to **incest should include step-parent and other person who** has the parents authority during the time when the offence is committed.
10. **mandatory reporting** on child abuse should be provided for in the Act and any person who comes to know of it should be legally bound to report the matter to the police.

11. **an attempt to commit defilement** should be treated in terms of penalty like in an attempt to commit rape. It is recommended that the same penalty should apply to an attempt to commit rape as well as to an attempt to commit defilement.
12. **the offence must be non bailable.** Much as the courts have discretion on the issuance of bails in this matter, **it must be mandatory** as it is for car theft. This would deter would be perpetrators. The only disadvantage is if the perpetrator is later found not guilty or is acquitted, than there was mistreatment on the innocent party. Though it can be like that, there seems to be no two ways about it. If the perpetrator did defile the child and is on bail, that is if the offence is bailable, he or she would threaten the victim and would be a danger to society. Such people must not be let on the loose.

4.2 CONCLUSION

There is overwhelming evidence that child sexual defilement exist in Zambia as the reports on a daily basis show. The brochure released by the global civic organization said that “Ninety-five percent of prostitutes and eight percent of substance abusers were abused as children, eighty percent of children who run away from home cite abuse-

related reasons and seventy-eight percent of the total prison population in the world were abused as little children.⁵

Considering the deadly effects of child-sexual defilement, this is a crime of serious nature. The adverse effect such as traumatisations, being infected with the HIV Virus or any other sexually transmitted disease and above all resulting into death, are some of the aspects to take into consideration in passing a stiffer punishment for these child-defilers. If such conduct can lead to death, it is as good as murder and hence a very serious crime.

It has been noted that child sexual defilers take advantage of those innocent young souls which shows that it is a deliberate move by an adult on the child because the child can easily be deceived.

If our society should have some fiber in it, then the future should be of great concern. The future of this nation is being destroyed right here right now. Potential intelligent and future leaders are being destroyed today. If children being brought up today know only misery, pain, and humiliation, what will they pass on to the future generation? They will also pass on misery, humiliation and pain. Then what kind of society are we breeding? The fact that there are mechanisms in place to provide order and justice, these must be taken advantage of. Morals too must not be eroded by such degrading criminal acts. There can be no justification in taking away the happiness, freedom and rights of a child who is innocent in all aspects. To ensure that the child is protected, morals are upheld, justice is done, rules and laws must reflect the society's norms.

⁵ Reported in the Times of Zambia.

These should start from the home where the children stay and extend to the outside world or society. Parents have an obligation bestowed upon them naturally and government can use the tools necessary in ensuring the protection of the children in our society. The Breakdown of family and social values expose and make our children vulnerable to sexual abuse.

Zambia's future is at stake, so measures must be taken to curb child sexual defilement if we are to see a happy and developing society. Statutory legislation must be reviewed and modified to conform to the United Nations Convention on the Rights of the Child. The welfare and protection of minors need to be clearly specified. Interventions should be multi social converging and integrated and should include not only protection and prevention but also recovery, co-ordination, cooperation and child participation. We have to acknowledge that we are living in truly decadent times, therefore we need to act now for a better tomorrow.

I hope this paper has served as an eye opener to what is happening around us and that something must be done if we value the lives of our children.

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